



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0773; FRL-9219-02-R9]

Air Plan Approval; Arizona: Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of particulate matter (PM) from wood burning devices. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0773. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4125 or by email at vineyard.christine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On December 14, 2021 (86 FR 70994), the EPA proposed to approve the following rules into the Arizona SIP.

| Local Agency | Rule No. Ordinance No. | Rule Title | Revised | Submitted |
|--------------|---------------------------|---|----------|-----------|
| MCAQD | Ordinance P-26 | Residential Woodburning Restriction | 10/23/19 | 11/20/19 |
| MCAQD | Rule 314 | Outdoor Fires and Commercial/ Institutional Solid Fuel Burning | 10/23/19 | 11/20/19 |

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. Our proposed action and Technical Support Document (TSD) contain more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received one comment from a private citizen.

Comment: The commenter raises the concern that the revisions to the Arizona State Implementation Plan (SIP) “do not go far enough to reduce the risks of wildfires and particulate matter emissions.” The comment emphasizes the need to “uphold the highest air quality standards of the Clean Air Act” and “strongly regulat[e] fires in Maricopa County” to reduce the

impacts on environmental and human health from woodburning and seasonal wildfires, including those impacts that are exacerbated by the COVID-19 pandemic.

The commenter ultimately “oppose[s] the conditional approval” from the EPA’s proposal and requests that Maricopa County “further revise these provisions within their State Implementation Plan to meet the strongest of air quality standards regarding particulate matter.”

EPA’s Response: We note that we proposed to fully approve, not conditionally approve, revisions to MCAQD Ordinance P-26 and Rule 314.

As we explained in our proposed action and TSD, during Maricopa County’s implementation of earlier versions of Ordinance P-26 and Rule 314 (i.e., those that were previously approved into the SIP), the MCAQD found that certain sections of Rule 314 were unclear and confusing to the public. Therefore, the MCAQD revised the rules to clarify which types of residential fires are subject to Rule 314 and which types of residential fires are subject to Ordinance P-26. The EPA’s finalization of our proposed action to approve the submitted revisions to Ordinance P-26 and Rule 314 will add clarity to the SIP and improve implementation.

Further, Rule 314 was revised to reduce emissions from outdoor fires for cooking by defining cooking, restricting the size of fires used for cooking, and requiring that fires ignited for cooking during a restricted burn period be extinguished once the food is suitable for human consumption. And to reduce total annual emissions from fireplaces, woodstoves, and chimineas at commercial and institutional establishments and outdoor fires, the rules were revised to require the use of seasoned wood, which contains no more than 20 percent moisture. These revisions will directly reduce particulate matter emissions and contribute to the area’s compliance with the 2012 National Ambient Air Quality Standard for fine particulate matter.¹

Under the CAA, EPA is required to approve a SIP submission that complies with the

¹ Rule 314-SIP Revision Package p. 37-38, Docket ID: EPA-R09-OAR-2021-0773-0002.

provisions of the CAA and applicable federal regulations.² In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Thus, we are approving MCAQD Ordinance P-26 and Rule 314 because they strengthen the SIP and comply with all requirements for SIP revisions under the Clean Air Act.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the Arizona SIP. The October 23, 2019 version of Ordinance P-26 and Rule 314 will replace the previously approved versions of these rules in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAQD rules described in Section I. of this preamble and set forth below in the amendments to 40 CFR part 52. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³ The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

² 42 U.S.C. 7410(k); 40 CFR 52.02(a).

³ 62 FR 27968 (May 22, 1997).

40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 7, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart D – Arizona

2. Section 52.120, paragraph (c), Table 4, under the heading “Post-July 1988 Rule Codification”, is amended by:

a. Revising the entry for Rule 314 under the table heading “Regulation III - Control of Air Contaminants”; and

b. Adding a heading for “Maricopa County Ordinances” and an entry for “Ordinance P-26” under the table heading “Appendices to Maricopa County Air Pollution Control Rules and Regulations” after the entry for “Appendix F”.

The revision and addition read as follows.

§52.120 Identification of plan.

* * * * *

(c) * * *

Table 4 to Paragraph (c)—EPA-Approved Maricopa County Air Pollution Control Regulations

| County citation | Title/subject | State effective date | EPA approval date | Additional explanation |
|--|-------------------|----------------------|--|---------------------------|
| * * * * * | | | | |
| Post-July 1988 Rule Codification | | | | |
| * * * * * | | | | |
| Regulation III - Control of Air Contaminants | | | | |
| ***** | | | | |
| Rule 314 | Outdoor Fires and | October 23, 2019 | [INSERT <i>Federal Register</i> CITATION], | Submitted on November 20, |

| | | | | |
|---|---|---------------------|--|---------------------------------------|
| | Commercial/ Institutional Solid Fuel Burning | | [INSERT DATE OF PUBLICATION] | 2019. |
| ***** | | | | |
| Appendices to Maricopa County Air Pollution Control Rules and Regulations | | | | |
| * * * * * | | | | |
| Maricopa County Ordinances | | | | |
| Ordinance P- 26 | Residential Woodburning Restriction | October 23, 2019 | [INSERT <i>Federal Register</i> CITATION], [INSERT DATE OF PUBLICATION] | Submitted on November 20, 2019. |

* * * * *

[FR Doc. 2022-07922 Filed: 4/13/2022 8:45 am; Publication Date: 4/14/2022]